

(1988) 05 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 353 of 1988

Smt. Laxmi Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-1988

Acts Referred:

Constitution of India, 1950 — Article 14
High Court and Supreme Court Judges (Conditions of Service) (Amendment) Act, 1986 — Section 3, 6
High Court Judges (Conditions of Service) (Amendment) Act, 1986 — Section 17A, 17A(1), 3

Citation : AIR 1989 All 90

Hon'ble Judges : B.N. Sapru, J; Anshuman Singh, J

Bench : Division Bench

Advocate : Vishnu Sahai, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This petition was originally filed by Smt. Laxmi Devi widow of late Sri Bishambhar Dayal, retired Chief Justice of Madhya Pradesh High Court who died on 24-1-1988 leaving behind her son Sri Bhupeshwar Dayal, as her heir and legal representative and after her death the name of Mr. Bhupeshwar Dayal has been substituted in place of Smt. Laxmi Devi wife of late Sri Bishambhar Dayal, as petitioner in this case by order dated 24-3-1988.

2. Facts giving rise to this petition briefly stated are that Sri Bishambhar Dayal, was appointed as a Judge of the Allahabad High Court on 6th May 1957 and was appointed Chief Justice of the Madhya Pradesh High Court on 19th Mar. 1969. After working as Chief Justice for more than three years he retired on 14th Sept., 1972.

3. In the year 1977 he was appointed as Lok Ayukt of Uttar Pradesh for a period of five years. He completed his five years tenure as Lok Ayukt in Sept., 1982 and

it was on 19th Feb., 1987 that he left for heavenly abode. The pension of late Sri Bishambhar Dayal was fixed, according to Maximum pension admissible under the High Court Judges (Conditions of Service) Act, 1954, as amended by Act No. 35 of 1976 w.e.f. 1st Oct., 1974. After the relevant deductions on the basis that he completed 12 years service as a Judge of the High Court and 8 years as Chief Justice (three years as Chief Justice of Madhya Pradesh High Court and five years as Lok Ayukt) under the said scheme the pension of late Justice Bishambhar Dayal was fixed at Rs. 28,000/- per annum which he received till the date of his death. The High Court Judges (Conditions of Service) Act, 1954 was further amended by Act No. 38 of 1986 passed by the Parliament. It also Amended inter alia, the provisions with regard to the pension and family pension of the High Court Judges. The amendment came into force from 1st Nov., 1986. Section 6 of Act No. 38 of 1986 amended , the 1st Schedule to the High Court Judges (Conditions of Service) Act, 1954 and inserted after para. 10 para "11" which reads as follows :

"11. In the case of a Judge to whom this part applies and who has retired on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, the foregoing provisions of this part shall have effect subject to the modifications that: --

(i) For para 2, the following paragraph shall be substituted, namely,

2. Subject to the other provisions of this part, the pension payable to a Judge to whom this part applies and who has completed not less than seven years of service for pension, shall be--(a) for service as Chief Justice in any High Court Rs. 4800/- per annum for each completed year of service.

(b) for service of any other Judge in any High Court Rs. 3430/- per annum for each completed year of service.

Provided that the pension shall in no case exceed Rs. 45000/- per annum in the case of a Chief Justice and Rs. 48,000/- in the case of any other Judge.

(ii) & (iii).....:.....

(iv) For para. 8, the following para, shall be substituted, namely-

8. Notwithstanding anything contained in the foregoing provisions of this part, the pension payable to a Judge who has completed fourteen years of service for pension, including not less than six years of service as Chief Justice of one or more of the High Courts, shall be Rs. 54,000/- per annum."

4. After passing of the aforesaid Act, the wife of later Justice Bishambhar Dayal claimed that her husband was entitled to receive Rs. 54,000/- per annum as pension from 1st Nov., 1986 till his death i.e. 19th Feb., 1987.

5. Smt. Laxmi Devi wife of late Sri Bishambhar Dayal sent a letter to the Accountant General (Accounts) Madhya Pradesh, Gwalior (MP) dt. 26th Sept., 1987, copy of which has been filed as Annexure "1" to the writ petition

requesting him that her husband was entitled to receive maximum pension of Rs. 54,000/- per annum. In the same letter she also claimed that she was entitled to receive family pension after the death of her husband which was also not paid to her. In reply to the said letter Smt. Laxmi Devi widow of late Justice Bishambhar Dayal received a letter dt. 19th Oct. 1987 signed by Sri Babu Lal, Under Secretary to the Government of India informing her that President has been pleased to sanction to the payment of family pension of Rs. 250/- per month w.e.f. 20th Feb. 1987 to her. In the same letter, it was also mentioned that the arrears of pension of late Judge if due may be paid to the widow. But in spite of the said letter nothing was paid to Smt. Laxmi Devi widow of late Sri Bishambhar Dayal which necessitated the filing of the present petition under Article 226 of the Constitution of India in which a prayer has been made for a writ of mandamus directing the respondents to pay the entire arrears of enhanced pension of the petitioner's husband with interest. A prayer has also been made for a writ of mandamus directing the respondents to pay family pension to the wife of late Justice Bishambhar Dayal at the rate of 27000/- per annum from 20th Feb. 1987 (half of the pension payable to her husband in view of Amending Act No. 38 of 1986).

6. When this petition was presented on 5-1-1988 Senior Standing Counsel for Government of India accepted notice on behalf of the respondents Nos. 1 to 3 and he was allowed six weeks time to file a counter affidavit and the petition was ordered to be listed on 22-2-1988 for admission. The petition was listed on 22-2-1988 but it could not be taken up. On 24-2-88 when the petition came up before us the Standing Counsel made a request that he should be granted further time to file the counter affidavit. We, therefore, granted six weeks time to file a counter affidavit. We had also indicated in our order that the case may be decided finally on the next date but in spite of the time granted twice to the learned Senior Standing Counsel no counter affidavit was filed. On 28-4-1988 we proceeded to hear the writ petition and after hearing for some time Mr. N. B. Singh, Senior Standing Counsel, made a request to grant further time to file a counter affidavit. We, therefore, again granted ten days time to file the counter affidavit and ordered the case to be listed for further hearing on 10-5-1988. In spite of the fact that we granted further time to the Senior Standing Counsel and adjourned the hearing for today for further hearing, no counter affidavit has been filed till today. However, again a request was made on behalf of the Union of India on which we are not inclined to grant any further time.

7. Learned counsel for the petitioner contended that the words restricting the application of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986 to the Judges who have retired on or after its commencement are discriminatory and violative of Article 14 of the Constitution of India. In support of his argument learned counsel for the petitioner relied on a decision of this Court in Bidhubhushan Malik v. Union of India AIR 1983 All 209 in which the question of grant of pension to the Judges who retired prior to 1st Oct. 1974 was involved and this Court struck down the offending words as

unconstitutional. The language used in the Amending Act of 1976 was similar as used in Ss. 3 and 6 of the Amendment Act, 1986 for grant of enhanced pension to the Judges and family pension to the widows. The aforesaid decision of the Allahabad High Court has been affirmed by the Supreme Court in Union of India Vs. Bidhubhushan Malik and Others, , Applying the same principle and also keeping in view the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), we are of opinion that the provisions contained in the Amending Act of 1986 restricting the application of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986 to the Judges who have retired on or after its commencement are discriminatory and liable to be struck down.

8. As already stated Justice Bihambhar Dayal had completed ten years service as a Judge of the High Court and eight years as Chief Justice (three years as Chief Justice of Madhya Pradesh High Court and five years as Lok Ayukt) he was entitled to receive pension at the rate of Rs. 54000/- per annum from 1st Nov., 1986 till his death i.e. 19th Feb. 1987. He had been paid pension at the rate of Rs. 28,000/- per annum only and we are, therefore, of the definite opinion that he was entitled to receive the difference from 1st Nov., 1986 to 19th Feb. 1987 i.e. the date of his death.

9. The other controversy involved in the case is whether Smt. Laxmi Devi widow of Late Justice Bishambhar Dayal was entitled to receive pension from the succeeding date of the death of her husband till her death i.e. 24th Jan. 1988, i.e. the period from 22-2-1987 , to 24-1-1988. The contention raised on behalf of the petitioner is that she was entitled to receive family pension at the rate of half of the pension to which her husband was entitled to receive till her death.

10. For deciding the controversy regarding the family pension to Smt. Laxmi Devi widow of Late Justice Bihambhar Dayal, it is pertinent to mention Sub-section (1) of Section 17-A substituted by the Amending Act which reads as under : --

"(1) Where a Judge who, being in service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, dies, whether before or after retirement in circumstances to which Section 17 does not apply, family pension calculated at the rate of fifty percent of the pension admissible to him on the date of his death shall be payable to the person or persons entitled thereto and the amount so payable shall be paid from the day following the date of death of the Judge for a period of seven years or for a period up to the date on which the Judge would have attained the age of sixty five years, had he survived, whichever is earlier, and thereafter at the rate of half of the family pension so admissible.

Explanation.-- For the purposes of determining the person or persons entitled to family pension under this sub-section : --

(i) in relation to a Judge who elects or is eligible to receive pension under Part 1 of the First Schedule, the rules, notifications and orders for the time being in

force with regard to the person or persons entitled to family pension in relation to an office of the Central Civil services. Group "A" shall apply;

(ii) in relation to a Judge who elects to receive pension under Part II or Part III of the First Schedule, the ordinary rules of his service if he had not been appointed a Judge with respect to the person or persons entitled to family pension shall apply and his service as a Judge being treated as service therein."

11. From a perusal of the provisions added to Section 17-A(1), it is clear that since late Justice Bishambhar Dayal died after attaining the age of 65 years Smt. Laxmi Devi was entitled to receive pension at the rate of 1/4th.

12. Mr. Bhupeshwar Dayal has urged before us that the legislature has classified widows of the late Judges in two classes; whose husband had died within seven years or whose husband had not attained the age of 65 years had they been alive and the widows of those Judges who died after attaining the age of 65 years. He stated that the discrimination is hostile one and there is no nexus that the widows whose husbands died after attaining the age of 65 years should get 1/4th family pension of the pension which their husbands were entitled to receive on the date of their death. He has not been able to place any material and we do not find any arbitrariness as well as we find it difficult to accept the said contention and are of the opinion that since Late Justice Bishambhar Dayal had attained the age of 65 years, Smt. Laxmi Devi mother of the petitioner was entitled to receive the family pension at the rate of 1/4th payable to Justice Bishambhar Dayal on the date of his death which has been denied and she was legitimately entitled to receive the same.

13. As held above Smt. Laxmi Devi mother of the petitioner is entitled to receive 1/4th family pension of the pension payable to Justice Biahambhar Dayal on the date of his death, letter No. 13/11/83-Jus. dt. Oct. 19, 1987, issued by the Government of India, Ministry of Law and Justice, Department of Justice, New Delhi, addressed to the Accountant General, Madhya Pradesh, Gwalior, fixing the family pension to Smt. Laxmi Devi at Rs. 250/- per month deserves to be quashed.

14. In the result the writ petition succeeds and is allowed. We issue a writ of certiorari quashing the words "who, being in service on or after the commencement" of the Amending Act 1986 used in Sub-section (1) of Section 17-A of the High Court Judges (Conditions of Service) Act by Section 3 of the Amending Act 1986, and the words "who has retired on or after the commencement" of the Amending Act 1986 used in para. 11 in part I of First Schedule of the High Court Judges (Conditions of Service) Act by Section 6 of the Amending Act, 1986. We also issue a writ of mandamus directing the respondents to pay the difference in Rs. 28,000/- and Rs. 54,000/- as pension of Justice Bishambhar Dayal from 1-11-1986 to 19-2-1987 within a period of four months from today and also pay interest at the rate of 12% per annum on the aforesaid amount till the date of payment. We further issue a writ of certiorari

quashing the letter dt. 19-10-1987 issued by the Government of India to the Accountant General, Madhya Pradesh. The respondents are directed to pay family pension to Smt. Laxmi Devi at the rate of 1/4th of the pension payable to her husband on 19-2-1987 from 20-2-1987 to 24-1-1988. The petitioner shall also be entitled to receive the costs.